



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

EXECUTIVE DIVISION

By ECF

March 17, 2023

Hon. Kiyo A. Matsumoto
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Town of Babylon, NY, et al. v. James, No. 22-cv-1681 (KAM)(AYS)

Dear Judge Matsumoto:

This office represents Defendant Letitia James, sued in her official capacity as Attorney General of the State of New York, in the above-referenced action. Following the Court's February 23 ruling from the bench granting Defendant's motion to dismiss without prejudice, Plaintiffs filed a Fourth Amended Complaint on March 9, 2023 (Dkt. No. 45) ("FAC"). Having reviewed the FAC, Defendant writes to advise the Court that she intends to proceed with motion practice to dismiss the action.

Succinctly stated, the FAC does not cure any of the fatal deficiencies in Plaintiffs' prior complaint. Among other issues, Plaintiffs still: (i) fail to allege facts that would bring this case within any of the narrow exceptions to New York's legal capacity rule; (ii) have no standing to challenge a state statute based on the assertion of First and Fourteenth Amendment rights; and (iii) lack a private right of action to pursue their federal claims. Defendant proposes to serve her motion to dismiss by April 3, 2023.

I look forward to discussing the briefing scheduling with the Court at the upcoming telephonic conference on March 21.

Respectfully,

/s/ Andrew S. Amer
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cc: Counsel of Record (via ECF)